THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NO.14376 OF 2005

DISPOSED OF ON 1.9.2005

BETWEEN:

Raj Kumar Malpani, Banjara Hills, Hyderabad……Petitioner

And

Commissioner of Police, Hyderabad and others…Respondents.

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ORDER :

1. This Writ Petition has been filed by Raj Kumar Malpani with a prayer to issue a Writ of Mandamus declaring the action of the respondents 1 to 4 in not booking a case of trespass against respondents 11 to 13 and their henchmen as illegal, arbitrary and unconstitutional and consequently direct respondents 1 to 4 to book a case of trespass against respondents 12 and 13 and further direct the respondents 1 to 4 to extend necessary help to the petitioner to protect the property in premises No.8-2-644/1, part of old S.No.22 and T.S.No.46/2, Ward 12, Block D of Shaikpet Village.

2. The case of the petitioner as disclosed in the affidavit filed in support of the writ petition be summarized in brief as follows:

One Heeralal, the father of 11th respondent was the absolute owner of the premises No.8-2-644/a. After his death the property devolved upon his sons; R11 and his brother namely Shivlal, who is father of R13. R11 and his brother-Shivlal executed an agreement of sale dated 17.2.1984 in favour of Smt.Razia Sultan and put her in possession of the property. They also executed a registered GPA dated 25.2.1984 in favour of her husband Syed Ahmed to deal the property in the manner considered appropriate. On 19.11.1989 R11 and his brother, who is father of R13, represented by their registered GPA holder Sri.Syed Ahmed executed an agreement of sale and development in favour of the petitioner for valuable consideration and delivered possession to him. When R5 to R11 along with Shivlal, father of R13, tried to interfere with the petitioner's peaceful possession and enjoyment of the property, the petitioner filed O.S.No.1629 of 1999 on the file of II Senior Civil Judge, CCC, Hyderabad. The said suit ended in decree on 12.10.2001. Assailing the judgment and decree passed in O.S.No.1629 of 1999 R5 to R10 preferred an appeal in CCCA.No.228 of 2001 and obtained interim order of status quo on 17.11.2001. R5 to R10 who are defendants 1 to 6 in the suit set up R11 to R13 and attempted to interfere with the possession of petitioner. Thereupon, the petitioner presented a complaint before the police. Since the police have not taken any action on the

complaint and not extended help to the petitioner, he has chosen to file this writ petition invoking the jurisdiction of this court under Article 226 of the Constitution of India.

3. R1 to R4, R11 and R12 filed counter affidavits. E.Shankar Reddy, Inspector of Police, Banjara Hills Police Station has sworn to the counter affidavit on behalf of R1 to r4. It is stated in the said counter affidavit that a case in Cr.No.583 of 2005 under sections 447, 427 and 323 IPC came to be registered on the complaint dated 11.7.2005 submitted by the petitioner and the investigation in the said crime is in progress.

4. Counter affidavit filed on behalf of R12 is sworn to by Ballo Bai. She claims that her husband Heeralal purchased an extent of 22022 square yards from oen Smt.Raheemunnisa Begum through a registered sale deed No.524 of 1957, dated 8.11.1957. She also narrated the previous litigation in respect of the property between her husband and some others. She referred to certain land grabbing proceedings being L.G.C.No.145 of 1989 initiated against R13. In nutshell her contention is that since the property belongs to her husband, she is entitled to her due share in the property. A further assertion has been made that the property continues to be in possession of the members of her family. I deem it appropriate to refer the relevant portion of para 11 of the counter affidavit and it is thus:

> " 11. In reply to the allegations in para 8 of the petitioner's affidavit, I submit that they are not truly and correctly stated and I deny the same in toto. The allegation that on 24.6.2005, I along with respondent No.13 trespassed into the property is absolutely false and concocted for the purpose of filing of the writ petition. It is also false to state that we have abused the staff of the petitioner. It is also very pertinent to submit that as on today along with me, my tenants are also in possession of the property and the petitioner has not obtained any decree either against me or against my tenants. Further, the petitioner who is making all efforts has invented the story for the purpose of registering the false case and also to seek police aid to dispossesses us from the property. It is settled principle of law that as a true owner of the property, we can inspect, supervise our property till the property has been transferred legally. Further, the allegation that myself and other respondents have wantonly disobeying of the orders is far from truth and the petitioner has not come with clean hands and also inviting this Hon'ble Court to settle the civil disputes relying on the pleadings of O.S.No.1629 of 1999

which is the subject matter before this Hon'ble Court in CCCA.228 OF 2001. I submit that the petitioner who fails to make out a case for filing Execution Petition before the Civil Court has chosen to file this Writ Petition with vague allegations and if this Hon'ble Court grants any relief entertaining the Writ Petition, it amounts to deciding the CCCA.228 of 2001 in the Writ Proceedings.

I respectfully submit that it is not out of place to mention that on the instigation of the petitioner when 3rd parties and some anti social elements tried to disturb our possession, I filed a suit on 18.5.2005 bearing O.S.No.877 of 2005 (82 of 2005 in vacation court) ion the file of the II Senior Civil Judge, CCS, Hyderabad and obtained injunction. After coming to know the injunction against the agents and henchmen of the petitioner, who failed to take forcible possession from me, the petitioner has resorted to file this present Writ Petition on 4.7.2005 making me as a party to the Writ Petition and praying this Honourable Court to grant police aid with an intention to dispossess me from our property."

5. Counter filed by R11 in brief is that the property is the joint family property and no partition has been effected between the legal heirs of Heeralal and the property is managed by R12 who is head of the family. It is further stated in the counter affidavit that one Dharma Singh who is known as land grabber and encroacher in Banjara Hills area has fabricated the documents and got the suit filed by the petitioner. I deem it appropriate to refer para 4 of the counter affidavit and it is thus:

" 4. With regard to the various allegations in paras 3 to 6 of the petitioner's affidavit, I submit that they are not truly and correctly stated and I deny the same in toto. The allegations are based on the judgment in O.S.No.1629 of 1999 passed by the Honourable II Senior Civil Judge, CCS, Hyderabad. Admittedly, in the above case neither I have received summons nor authorized any person to file vakalathnama/written statement on my behalf, therefore, those findings are not binding on me. It is very pertinent to submit that one Mr.Dharmender Singh, who is known as land grabber and encroacher in the Banjara Hills area had been trying to grab the land has taken some documents and signed papers for verification, seems to have fabricated the documents. I apprehend that Mr.Dharam Singh might have colluded with the petitioner to create fabricated and forged documents to suit the claim of the petitioner in O.S.No.1629 of 1999. Therefore, I am reserving my right to file appropriate petitions before the Honourable courts/forums against the petitioner and Mr.Dharamender Singh."

6. Heard Sri.Nuty Ram Mohan Rao, learned counsel appearing for the petitioner, learned Government Pleader for Home appearing for R1 to R4, Mr.Vilas V.Afzulpurkar, learned counsel appering for R5 to R10, Mr.C.V.Bhaskar Reddy, learned counsel appearing for R12 and R13 and mr.T.Rajasekhara Rao counsel appearing for R11.

7. Learned counsel appearing for the petitioner submits that it is the duty of respondents 1 to 4 to render necessary assistance for implementation of the orders passed by the Civil Court and their failure to take any action on the complaint submitted by the petitioner and inaction in rendering necessary assistance to the petitioner to protect the property from being grabbed by respondents 11 to 13 and their henchmen is wholly unjustified and therefore necessary direction is required to be given to respondents 1 to 4 for registering a case and rendering necessary help to the petitioner to protect the property from being grabbed by R11 to R13 and their henchmen. He further submits that R11 and Shivlal, father of R13, are defendants 7 and 8 in O.S.No.1629 of 1999 and they filed their written statement admitting the execution of agreement of sale in favour of Smt.Razia Sultana and GPA in favour of Syed Ahmed in respect of the suit property in the year 1984 and delivery of possession of the property to Razia Sultana in the year 1985 and therefore the respondents 11 to 13 have no right over the property. In support of his submissions, he took me to the judgment of the Civil Court passed in O.S.No.1629 of 1999. Copious references have been made to the findings recorded by the Civil Court in the judgment to buttress his submissions that R11 to R13 have no right over the property and they are not in possession of the same. Reliance has also been placed on the decision of our High Court in 2005(3) ALD 772 which came to be confirmed by a Division Bench of this Court in W.A.No.663 of 2005.

8. Learned counsel appearing for R12 and R13 submits that R12 and R13 being the legal heirs of Heeralal they are in possession of the property and therefore no police help can be provided to the petitioner and more so to the person who is not in possession of the property. His further submission is that the writ petition itself is not maintainable since the dispute between the parties has not reached finality in view

of the pendency of CCCA.228 of 2001. A further submission has been made that if there is any violation of the status quo order granted in the said CCCA, the petitioner has to work out his remedies in the said appeal and not by way of filing writ petition. He refers the judgment of Supreme Court in SWAMY ATMANANDA V. SWAMI BODHANANDA wherein it has been held that a decree passed by a Civil court must be passed in terms of the provisions contained in CPC. The writ petition is not appropriate remedy therefore.

9. It is not in dispute that Heeralal was the original owner of the property. He had two sons namely Om Singh and Shivlal, the father of R13. R12-Smt.Ballu Bhai is the wife of Heeralal. It is the case of the petitioner that he purchased the property under an agreement of sale dated 19.11.1989 and he has been in possession of the same since then. Whereas it is the claim of respondent 12-Smt.Ballu Bhai, who is wife of Heeralal, that after the death of her husband she has been in management of the family and she asserts to be in possession of the same. Admittedly, Ballu Bhai is not a party to the suit in O.S.No.1629 of 1999. R5 to R10 who are D1 to D6 in O.S.No.1629 of 1999 challenged the judgment and decree passed in the suit by filing the said CCCA and obtained status quo order. Since the appeal is pending adjudication, it cannot be said that rights of the parties over the property in dispute are finally settled. Therefore, the decision relied on by learned counsel appearing for the petitioner is not applicable to the facts of the case on hand. Since the said CCCA is pending the petitioner has to work out his remedies in the appeal in case of violation of the status quo order by R6 to R13. So far as registering the case is concerned, it has been stated in the counter affidavit of R1 to R4 that a crime has been registered and the same is pending investigation. Therefore, no further direction need be given to R1 to R4 with regard to registration of the crime.

10. In that view of the matter, this writ petition is disposed of giving liberty to the petitioner to work out his remedies by moving necessary application in CCCA.No.228 of 2001 wherein order of status quo has been granted. No order as to costs.

Dated: 01-09-2005. (B.Seshasayana Reddy, J)

Tnb

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